

APPEAL NO. 041213
FILED JULY 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 27, 2004. The hearing officer determined that the independent review organization (IRO) determination that spinal surgery was reasonable and necessary was supported by a preponderance of the evidence.

The appellant (carrier) appealed, contending that medical evidence from its doctors indicated that the requested surgery was not necessary. The file does not contain a response from the respondent (claimant).

DECISION

Affirmed.

This case involves a dispute over the medical necessity of proposed spinal surgery. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.308 (Rule 133.308) pertains to medical dispute resolution by IROs. See Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002, regarding application of a preponderance of the evidence standard.

The claimant was referred to the treating surgeon by his prior treating doctor and a referral doctor. The treating surgeon, a board certified orthopedic surgeon, testified that he believed fusion spinal surgery at L4-5 and L5-S1 after failed conservative care was reasonable and necessary. The designated doctor appeared to agree with that assessment. An IRO, conducted by a board certified neurosurgeon, agreed that the proposed surgery was reasonable. The carrier peer review doctor testified that the discography relied on was a very poor test and was not necessarily accurate, that there was no spinal instability, and that spinal surgery was not indicated. Reports of diagnostic testing were in evidence. The hearing officer determined that the IRO decision is supported by a preponderance of the evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701-2554.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Veronica L. Ruberto
Appeals Judge